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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/154,274	09/16/1998	ZOLTMAN G. TURI	BTG-5001	6727

7590 11/08/2002

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EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/154,274

Applicant(s)

Turi

Examiner

Michael Thaler

Art Unit

3731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 11, 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26, 28-51, 53-72, 74-96, and 98-172 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) 22-26, 28-32, 36, 37, 43-47, 49-51, 53-57, 61-63, 66-72, 74-78, 81-83 is/are rejected. <sup>89-91, 94-96, 98-102, 106-108 and 111-172</sup>
- 7) ☒ Claim(s) 33-35, 38-42, 48, 58-60, 64, 65, 79, 80, 84-88, 92, 93, 103-105, 109 is/are objected to. <sup>and 110</sup>
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 23 6) ☐ Other: \_\_\_\_\_

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The disclosure is objected to because of the following informalities: Reference numeral 27 is absent from the drawings. Appropriate correction is required.

Claims 22-26, 28-32, 36, 37, 43-47, 49-51, 53-57, 61-63, 66-72, 74-78, 81-83, 89-91, 94-96, 98-102, 106-108 and 111-172 rejected under 35 U.S.C. 102(e) as being anticipated by Buirge et al. (5,693,085). Buirge et al. show expandable member 10 and sleeve 13 formed of "collagen material" adjacent to the interior surface of the expandable member 10. The term "collagen material" is defined quite broadly in the Buirge et al. patent as including the materials disclosed in U. S. Patent Numbers 4,902,508 and 5,281,422 among others (col. 9, line 64 to col. 10, line 9). Patent No. 4,902,508 to Badylak et al. discloses that the graft may be formed of tissue as indicated by the term "tissue graft" in col. 2, lines 42 and 48, "tissue layers" in col. 2, lines 67-68 and "collagenous connective tissue" in col. 3, line 9, for example. Also, Patent No. 5,281,422 to Badylak et al. discloses that the graft may be formed of tissue as indicated in col. 1, lines 51 to col. 2, line 44, for example. Thus, Buirge et al. disclose tissue disposed adjacent to the interior surface of the expandable member as claimed.

Claims 1-21 are allowed.

Claims 33-35, 38-42, 48, 58-60, 64, 65, 79, 80, 84-88, 92, 93, 103-105, 109 and 110 are objected to as being dependent upon a

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rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed March 11, 2002 have been fully considered but they are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

mht  
October 31, 2002  
FAX (703) 305-3590



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731